



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

TIMOTHY BARNARD,

Plaintiff,

v.

Civil Action No. 3:07CV566

ANDREW JOHNSON, *et al.*,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia prisoner, filed this 42 U.S.C. § 1983 action through counsel. On June 19, 2008, the Court entered a pretrial order setting this action for jury trial on November 19, 2008. On July 28, 2008, the Clerk entered an order of default against four of the six remaining Defendants. Before the Court is Plaintiff's motion to dismiss Defendant Duane Merritt (Docket No. 51).

Plaintiff moves to voluntarily dismiss Defendant Duane Merritt pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. According to Plaintiff, Defendant Merritt does not oppose the motion. Plaintiff further explains that Defendant Williams has refused to respond to his repeated attempts at contact. Neither Defendant Williams nor Defendant Merritt has responded to the motion to dismiss Defendant Merritt, which was filed on September 16, 2008.

Rule 41(a)(2) authorizes voluntary dismissal by a plaintiff "on terms that the court considers proper." Upon review, the Court concludes that Defendant Merritt's legal rights will not be unfairly prejudiced by his dismissal from this action without prejudice. *See Davis v. USX Corp.*, 819 F.3d 1270, 1273 (4th Cir. 1987). Moreover, Defendant Merritt has not opposed the motion. Plaintiff's motion to dismiss Defendant Merritt will be GRANTED.

An appropriate Order shall enter.

/s/

Richard L. Williams

United States District Judge

SENIOR UNITED STATES DISTRICT JUDGE

OCT - 7 2008

Date: _____
Richmond, Virginia